

In re: J.R. SIMPLOT COMPANY.
PVPA Docket No. 02-0001.
Ruling on Order to Show Cause.
Filed September 25, 2002.

Robert A. Ertman, for Commissioner.
Richard C. Peet, Richard G. Stoll & James M. Silbermann, for Petitioner.
Decided by William G. Jenson, Judicial Officer.

On September 12, 2002, I issued an Order to Show Cause: (1) stating J.R. Simplot Company [hereinafter Petitioner] suggests that I defer the decision in this proceeding until such time as an agency decision is issued on a petition that Petitioner intends to file seeking review of the Commissioner's July 25, 2002, denial of Petitioner's request for revival of PVP Application No. 9600256; and (2) ordering Paul M. Zankowski, Commissioner, Plant Variety Protection Office, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Commissioner], to show cause why I should not defer seeking the advice of the Plant Variety Protection Board in this proceeding and why I should not defer a decision in this proceeding until after an agency decision has been issued regarding Petitioner's contemplated petition regarding the revival of PVP Application No. 9600256.

On September 20, 2002, Petitioner instituted appeal of the Commissioner's July 25, 2002, denial of Petitioner's request for revival of PVP Application No. 9600256 by filing "Petition Under 7 C.F.R. § 97.300 for Revival of Application No. 9600256 in the Name of J. R. Simplot Company" [hereinafter Revival Petition]. That proceeding is captioned *In re J.R. Simplot Company*, PVPA Docket No. 02-0002.

On September 23, 2002, the Commissioner responded to the Order to Show Cause stating the Commissioner agrees that it would be appropriate to defer a decision in this proceeding and consider Petitioner's petition in this proceeding simultaneously with Petitioner's contemplated related petition (Response to Order to Show Cause).¹

No cause having been shown for not deferring the decision in this proceeding, at this time, I intend to defer seeking the advice of the Plant Variety Protection Board in this proceeding until I seek the advice of the Plant Variety Protection Board in *In re J.R. Simplot Company*, PVPA Docket No. 02-0002, and I intend to defer issuing a decision in this proceeding until I issue a decision in *In re J.R.*

¹Apparently, at the time the Commissioner filed the Response to Order to Show Cause, the Commissioner was unaware that Petitioner had filed its Revival Petition in *In re J. R. Simplot Company*, PVPA Docket No. 02-0002.

Simplot Company, PVPA Docket No. 02-0002.
